

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

THOMAS NICHOLS, *et al.*, §  
§  
Plaintiff, §  
VS. § CIVIL ACTION NO. H-04-2242  
§  
ALLSTATE TEXAS LLOYD'S, *et al.*, §  
§  
Defendant. §

**MEMORANDUM OPINION AND ORDER**

This is a mold case. Plaintiffs, Thomas and Carolyn Nichols ("the Nichols"), sued Defendants, Allstate Texas Lloyds, Allstate Insurance Company, and John Albritton (collectively "Allstate") for breaching their homeowners' insurance policy by denying their claim for mold damage. The Nichols also joined claims for violation of the duty of good faith and fair dealing, the Texas Deceptive Trade Practices Act (DTPA), and the Texas Insurance Code.

In a previous opinion (Doc. 30) this court granted in part Allstate's motion for summary judgment. The court found that the Nichols's bad faith and statutory claims failed as a matter of law, but that a final determination of their breach of contract claim should await the Texas Supreme Court's decision in *Fiess v. State Farm Lloyds* , 392 F.3d 802 (5th Cir. 2004).

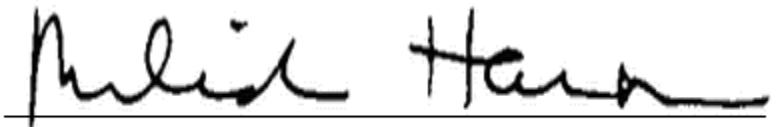
In *Fiess*, the Fifth Circuit requested a decision from the Texas Supreme Court on whether

the ensuing loss provision contained in Section I-Exclusions, part 1(f) of the Homeowners Form B (HO-B) insurance policy as prescribed by the Texas Department of Insurance effective July 8, 1992 (Revised January 1, 1996), when read in conjunction with the remainder of the policy provide coverage for mold contamination caused by water damage that is otherwise covered by the policy.

*Id.* at 811-812. The Texas Supreme Court answered that question in the negative. *Fiess v. State Farm Lloyds* , 202 S.W.3d 744, 745 (Tex. 2006).

The Texas Supreme Court's decision in *Fiess* forecloses Plaintiffs' last avenue for recovery. Accordingly, the court ORDERS that Allstate's motion for summary judgment on the Nichols's claim for breach of contract is GRANTED.

Signed at Houston, Texas, this 7th day of August, 2007.



Melinda Harmon  
United States District Judge